IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Lrs of Late Pema Ram Choudhary
Vs.
Rajasthan Rajya Vidhuit Vitran
Nigam Ltd., Jdohpur & Anr.

S.B. CIVIL WRIT PETITION NO.2072/1994
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 29th August, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Hemant Shrimali, for the petitioner.
Mr.G.M. Bhandari, for the respondents.

BY THE COURT

In the present writ petition, petitioner has challenged the order dated 04.03.1994 feeling aggrieved by the recovery sought to be made form him upon cancellation of his fixation vide order dated 23rd December, 1989 in the pay scale No.3 as SSA-II vide order dated 17.08.1976. Subsequently the petitioner

was allowed the very same pay scale pursuant to the judgment of the Hon'ble Supreme Court on 23.10.1989 in Special Leave to Appeal (Civil) No.746-51/1988. When the order dated 23.12.1989 cancelling his pay fixation was challenged by the petitioner in an earlier writ petition, this Court by its judgment dated 13.12.1991 set aside the order with a direction to the respondents to provide opportunity of hearing to the petitioner and pass fresh order thereafter.

The respondents have justified the order dated 23.12.1989 on the premise that the petitioner was appointed as causal labour on 01.06.1979 and obtained ITI certificate in the year 1977 in Trade Mulder. The petitioner was not appointed on any trade being appointee of 01.06.1977 and, therefore, his case was not covered under fixation phase beyond the scope of Singh-Sanchety Award. He was therefore wrongly fixed in pay scale No.3 by order dated 17.08.1976. The order dated 23.12.1989 was therefore rightly passed to rectify the mistake.

I have heard learned counsel for the parties and perused the records.

The controversy whether or not the petitioner and the likes of him should be paid scale No.3, came to be set at rest by

Hon'ble Supreme Court vide judgment dated 23rd October, 1989 (supra) in the following terms:-

> "Heard learned counsel for the parties. We are of the view that it would be appropriate to treat the petitioners at par with those who during the pendency of the W.Ps. In the High Court were allowed Scale No.3 with same qualification as the Petitioners possess. We accordingly direct that in each of these cases, the petitioner shall be given Scale No.3 and that Scale should be admitted from 1.11.1989. the same benefits should be available to others who are not before the Court if they have the same qualifications. The SLPs are disposed of."

In the meantime, petitioner had however approached to this Court by way of writ petition. This Court while disposing of the writ petition directed the respondents to provide an opportunity of hearing to the petitioner and pass fresh order. In the present case, fresh order passed on 04th March, 1994 is impugned in the present proceedings. It would be evident from this order that while the respondents reiterated their earlier order dated 23.12.1989 on the premise that pay fixation of the petitioner in scale No.3 was beyond the scope of Singh-Sanchety Award, at the same time the respondents have pursuant to the judgment of the Supreme Court dated 23.12.1989 and their clarification issued on 21st August, 1989 again allowed and fixed the pay of the petitioner in Scale No.3 w.e.f. 01.11.1989. The

only question remains to be decided in the present writ petition is whether they can recover the amount paid to the petitioner pursuant to the order dated 23.12.1989 for the period 17.08.1976 to 04.03.1994.

It is trial law that when certain amount is paid to a Government servant consequent upon a wrong pay fixation without there being any fault on his part, but only on account of the mistake committed by the Government Department itself, although the department would be justified in rectifying the mistake but the amount paid in excess cannot be recovered. This is so because, the Government servant cannot be held responsible for the mistake committed by the department concerned, if he is not guilty of mis-representation or fraud in securing such wrong order.

I may in this connection usefully refer to various decided case law of the Hon'ble Supreme Court in **Shyam Babu Verma and ors. v/s Union of India and ors.** [(1994) 2 SCC 521), **Bhagwan Shukla v/s Union of India and ors.** [AIR 1994 SC 2480], **Sahib Ram v/s State of Haryana and ors.** [1995 Sup (1) SCC 18], **Nand Lal and ors. v/s Raj. State Electy. Board and ors.** [RLR 1999 (2) 707] and **Lakshmi Narayan Mukhopadhyay v/s Union of India and ors.** [Jt 2002 (5) SC

355]. In all these judgments, the Hon'ble Supreme Court held that if certain excess amount was paid to the Government servant without there being any misrepresentation or fault on his part but solely owing to wrong instructions of certain Rule or Circular by the Government itself, amount so paid in excess cannot be recovered.

This Court also reiterated the very same view in number of judgments namely **Ramesh Kumar Sharma v/s State of Raj. & ors.** [WLR 1997 Raj. 55], **Sharvan v/s State of Raj. & ors.** [1998 (2) RLR-545 = WLR 1998 Raj. 423], **Narain Lal v/s State of Raj. & ors.** [RLR 2003 (3) 81] and **Alam Alsi v/s State of Raj. & ors.** [RLR 2000 (2) 721].

In view of the above, the present writ petition is allowed and the order dated 04.03.1994 so far as direction of recovery of the excess amount from to the petitioner pursuant to the order dated 23.12.1989 is quashed and set aside. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-